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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the
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Subject: REPORT FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL on the implementation of
Regulation (EC) no 789/2004 on the transfer of cargo and passenger
ships between registers in the Community

Delegations will find attached document COM(2015) 195 final.

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the implementation of Regulation (EC) no 789/2004 on the transfer of cargo and
passenger ships between registers in the Community**

{SWD(2015) 101 final}

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE
COUNCIL**

**on the implementation of Regulation (EC) no 789/2004 on the transfer of cargo and passenger
ships between registers in the Community**

1. INTRODUCTION

Regulation (EC) 789/2004¹ on the transfer of cargo and passenger ships between registers was an initiative to update and improve the former Regulation (EEC) 613/91². Unlike its predecessor, the current Regulation includes the transfer of passenger ships, makes explicit reference to related EU legislation and reinforces cooperation between national maritime administrations.

Transfers between registers are dealt with in a number of IMO conventions and instruments, as well as in circular MSC/Circ.1.1140/MEPC/Circ.424. Within the Union, Regulation (EC) 789/2004 is applicable. That Regulation aims at eliminating technical barriers to the transfer of cargo and passenger ships flying the flag of a Member State between the registers of the Member States while, at the same time, ensuring a high level of ship safety and environmental protection, in accordance with International Conventions.

It is worth to note that Directive 2009/21/EC on compliance with flag State requirements sets out in Articles 4 and 6 respectively the action to be taken by a flag State before it allows a ship to operate under its flag, the need to provide prompt information on ship deficiencies and safety-related information by the losing flag and the information which a flag State register should hold and which should be readily accessible by the public. A Commission report on that Directive was adopted in 2013³ and noted that readily accessible information and transparency of data on the performance of ships under Member State flags could help facilitate the transfer of ships.

2. SHIP REGISTERS

A ship register displays the ships that fly the flag of the State in question (the flag State).

Within the European Union, some Member States maintain two types of ship registers:

- National registers: these normally require the captain, officers and, in most cases, crew to be nationals of the flag State and to be remunerated according to the laws of that State. Not all EU Member States follow this tradition, examples being the Maltese and Cypriot flags.
- Second registers, where these requirements do not apply and some of them also offer tax advantages.

Regulation 789/2004 does not distinguish between these two types of registers.

Certain Member States operate a bareboat charter registration scheme, by which a ship which has been chartered for some time may be registered by the charterer with another flag State, as the charterer has possession of the ship and may decide that it is to his advantage to register the ship with another flag while he is in charge of the vessel. Thus a ship may appear in registers of two states.

¹ OJ L 138, 30.4.2004, p.19

² OJ L 68, 15.3.1991, p.1

³ COM (2013) 916 final

3. TRANSFERS BETWEEN REGISTERS

The basic mechanism of the Regulation is set out in Article 4. In principle, a Member State shall not withhold from registration, for technical reasons arising from the pertinent conventions⁴, a ship registered in another Member State which complies with the "requirements" and carries valid certificates and equipment approved or type-approved in accordance with Council Directive 96/98/EC of 20 December 1996 on marine equipment. "Requirements" are defined as the safety, security and pollution-prevention requirements relating to the construction and equipment of ships laid down in those conventions and, for passenger ships engaged on domestic voyages, those set out in Directive 2009/45/EC of the European Parliament and of the Council on safety rules and standards for passenger ships which recasts Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships.

The overall finding of this report is that no particular problems have appeared during the period of reference, 2006-2012. Details will be provided below in section 5.

During the period of reference, an important number of transfers has taken place. The accompanying Working Document of the Commission services [Ref. SWD (2015)101] displays the statistics on individual transfers in and out of the ship registries during this period.

4. INPUT FOR THE REPORT

According to Article 8 of the Regulation and from the information provided by Member States, the Commission can draw up this report on the overall situation.

Statistical data for the period of reference 2006-2012 are set out in the accompanying Staff Working Document. The data from the Member States are complemented by external data obtained from EMSA's MARINFO, which is drawn from commercial sources, to complete the situation on transfers between EU Member States with a picture on transfers to and from third countries.

The associated Staff Working Document sets out the data received in five Annexes:

- Annex 1 – sets out details of individual transfers of ships between Member State registers.
- Annexes 2 – 4 set out and summarise in graph form the data received from EU Member States.
- Annex 5 sets out the top 10 EU registers in relation to transfers to and from third countries. This derives from external data obtained from EMSA's MARINFO, which is drawn from commercial sources, to complete the situation on transfers between EU Member States with a picture on transfers to and from third countries.

⁴ For details, cf. section 5.1.

20 EU Member States⁵ have provided statistical inputs to the accompanying Staff Working Document. Where no statistics were obtained from the remaining flag States, including important flag states such as Cyprus, Italy or the United Kingdom, the Commission will actively follow up provision of the outstanding data.

5. STATUS AND COMMISSION OBSERVATIONS

5.1. Application of Article 4 as regards transfer of a ship between registers of EU Member States

Article 4 prohibits a Member State to withhold registration for technical reasons arising from three main IMO Conventions and their respective Protocols (SOLAS⁶, MARPOL⁷, the London Tonnage Convention 1969⁸ and related codes). It requires the Member State of the losing register to provide or make available all the relevant information on the ship including if applicable a list of improvements required by the losing register to the receiving register or recognised organisation acting on its behalf. The receiving register or recognised organisation acting on its behalf may carry out an inspection within a reasonable timeframe to confirm that the actual condition of the ship and its equipment are as specified in the certificates and if necessary allow the ship owner a reasonable opportunity to rectify any deficiencies.

The information provided to the Commission does not reveal any difficulties arising in such transfers. However, it was pointed out by some Member States that there could be difficulties where the Conventions leave margins of interpretation.

Commission Assessment

The Commission notes the fact that no particular difficulties were reported. Issues pertaining to Article 6 of the Regulation, which inter alia addresses differing interpretation are dealt with below

5.2. Application of Article 5 as regards issuing certificates

Article 5(1) requires the Member State of the receiving register or the recognised organisation acting on its behalf to issue certificates to the ship under the same conditions as those under the flag of Member State of the losing register, provided the grounds for any condition, exemption or waiver continue to apply. Moreover Article 5(2) stipulates that at the time of renewal, extension or revision of the certificates, the Member State of the receiving register, or recognised organisation acting on its behalf, is not allowed to impose requirements other than those initially prescribed insofar as they remain unchanged for existing ships.

The majority of reports from Member States indicated no problems. One Member State pointed out that for older ships it was difficult or indeed impossible to obtain all the relevant documentation, on which the ship's certification is based. However such cases

⁵ AT, BE, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, LV, LUX, MT, PT, RO, SE, SL.

⁶ 1974 International Convention for the Safety Of Life At Sea

⁷ 1973 International Convention for the Prevention of Pollution from Ships, as amended by the 1978 Protocol

⁸ The International Convention on Tonnage Measurement of Ships

concerned primarily ships registered prior to the entry into force of the Directive 96/98/EC on marine equipment.

Commission Assessment

The Commission notes the fact that most Member States have not reported any difficulties in issuing certificates in line with the Regulation.

5.3. Application of Article 6 as regards refusal of transfer and interpretation

Article 6 requires a Member State of a receiving register, which (1) refuses the issuance of certificates upon transfer of a vessel due to a divergence of interpretation of the requirements of the Convention or (2) refuses registration of the vessel for reasons relating to serious danger to safety, security or the environment to immediately notify the Commission. In the first case and where the two Member States concerned have not come to an agreement, the Commission should take a decision in accordance with the Committee procedure referred to in Article 7 of the Regulation. In the second case, the issue shall also be referred to the Commission for a decision, namely on whether or not to confirm the decision not to register. Again the procedure referred to in Article 7 shall apply.

No Member State has indicated that they have had to or intend to use the provisions in Article 6.

Commission Assessment

The general absence of any referral to the Commission by Member States or complaint by ship owners suggests that Member States have been able to deal with any problems.

5.4. Possible linkage with Directive 2009/21/EC on compliance with flag State requirements

Given the link between Articles 4 and 6 within Directive 2009/21/EC and the aim of Regulation (EC) 789/2004, the Commission asked EU Member States if there was merit in combining both in one legislative instrument. There was no clear reply. While some Member States were in favour, some considered there was no merit, and another group did not voice an opinion. One Member State was even against any new legislative initiative and invoked a risk that new uncertainties might be created. Another Member State considered the inclusion of the IMO MSC/Circ.1140/MEPC/Circ.424 of 20 December 2004 on the transfer of ships between States would have merit. The Commission may therefore look further at the benefits of such a consolidation.

Commission Assessment

The Commission may consider a consolidation of appropriate legal instruments based on further assessment of its benefits.

6. OVERALL ASSESSMENT OF THE IMPLEMENTATION OF REGULATION (EC) 789/2004

Based on the information available to the Commission, there do not appear to be any problems with the implementation of this Regulation.